SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

No.: 500-17-127376-237

DATE: January 28, 2026

BY THE HONOURABLE MARIE-CLAUDE LALANDE, J.S.C.

BRYAN C. SANCTUARY
Plaintiff

v.

MARK LEVY CPA INC.
and
MARK LEVY
and
FONDS D'ASSURANCE RESPONSABILITÉ PROFESSIONNELLE DES CPA DU QUÉBEC
Defendants

JUDGMENT[1]

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[1] On October 23, 2023, Brian C. Sanctuary filed an originating application by which he is suing Mark Levy CPA inc., Mark Levy and the Fonds d'assurance responsabilité professionnelle des CPA du Québec for the amount of $158,792.77 in damages, arising

[1] La traduction a été demandée. Vu le délai annoncé pour sa livraison, le Tribunal estime que de retarder la signature du présent jugement dans l'attente de la version traduite causerait un inconvénient grave aux parties au litige. La traduction suivra. The translation was requested. In view of the announced deadline for its delivery, the Court considers that delaying the signing of the present judgment pending delivery of the translated version would cause serious invenience to the parties to the dispute. The translation will follow.

from an alleged professional fault committed by Mark Levy, a duly registered Chartered Professional Accountant.

[2] Mark Levy CPA inc., Mark Levy and the Fonds d'assurance responsabilité professionnelle des CPA du Québec submit that Mr. Sanctuary's claim is abusive in that it is clearly prescribed, having been instituted on October 23, 2023, whereas the limitation period expired, at the latest, on September 4, 2023.

[3] As such, Defendants argue that Plaintiff's action has no reasonable chance of success, constitutes an abuse of procedure and should be dismissed.

[4] The parties acknowledge the three-year extinctive prescription period applies in this case.

[5] However, Plaintiff pleads that although he recognizes that he had sufficient knowledge of the error on September 23, 2020, the prescription delay was suspended by his demand letters sent on December 16, 2020, and January 7, 2023.

BACKGROUND

[6] In December 2012, Mr. Sanctuary acquired a home in Ontario and changed his residence to that province. He therefore filed his provincial and federal income tax returns for the year 2012 with the Canada Revenue Agency ("**CRA**") as a resident of Ontario.

[7] On August 20, 2015, Mr. Sanctuary received a letter from Revenu Québec informing him that he had failed to file his 2012 income tax return and requesting that he remedy the situation.

[8] On October 15, 2015, Revenu Québec reiterated its request and informed Mr. Sanctuary that he could incur penalties in the event of non-payment of the outstanding balance.

[9] On January 13, 2016, Revenu Québec issued a Notice of Assessment[2] informing Mr. Sanctuary that he owed $448 365.89, broken down as follows:

Taxes: $332,892.44
Penalties: $56,842.71
Interest: $ 58,631.74

[10] On February 10, 2016, Mr. Sanctuary filed a Notice of Objection to the Notice of Assessment through his representative, Mr. Paul Lemieux, an Ontario tax accountant.[3]

[2] Exhibit RR-1.
[3] Exhibit P-7.

[11] According to the allegations in his claim, Mr. Sanctuary subsequently retained the services of Mr. Mark Levy, CPA to obtain his opinion on the difference in taxes payable as a resident of Quebec rather than Ontario.

[12] It is in that context that Mr. Levy provided Mr. Sanctuary with the calculation document relating to the amount of provincial tax payable in Quebec (the **Calculation**). The exact date of this document is disputed by the parties[4].

[13] According to Mr. Sanctuary, based on the Calculation, he decided to pursue his challenge of the Notice of Assessment and to appeal it.

[14] On May 12, 2020, Justice Stéphane Davignon of the Quebec Court rendered a judgment dismissing Mr. Sanctuary's appeal[5].

[15] On June 6, 2020, Mr. Sanctuary applied to the CRA for his refund. The prescribed form specifically refers to a tax credit (*crédit d'abattement*). He received the refund from the CRA on September 4, 2020.

[16] On November 20, 2020, Mr. Sanctuary received a letter from Mr. Lemieux advising him that Mr. Levy's calculations in regard to the tax impact of being an Ontario rather than a Quebec resident contained an error[6].

[17] On December 16, 2020, Mr. Sanctuary sent Mr. Levy a demand letter[7].

[18] On January 27, 2023, Mr. Sanctuary sent a second formal demand letter to Mr. Levy[8].

[19] Mr. Sanctuary alleges that Mark Levy, in his role of CPA. made an error in the Calculation and claims damages accordingly. He argues that had it not been for the error, he would never have appealed the Notice of Assessment.

[20] Regarding the damages suffered, Mr. Sanctuary is claiming $158,792.77 from the Defendants, broken down as follows:

a. Mark Levy's fees: $925.05;

b. Tax lawyers' fees: $33,690.75;

c. Paul Lemieux's fees: $565;

d. Travel expenses related to the appeal: $1,350;

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[4] Exhibit RR-4.
[5] Exhibit RR-3.
[6] Exhibit P-15.
[7] Exhibit P-22.
[8] Exhibit P-23.

e. Interest paid to revenue Québec on the amount due, from the date of the Mr. Levy's calculation: $87,011.97;

f. Penalties: $250;

g. Trouble and inconvenience: $35,000.

ISSUE IN DISPUTE

1. **Dismissal of the application based on Article 51 CCP**

ANALYSIS

1.1 Applicable law

[21] The applicable principles to a motion to dismiss based on Article 51 CCP are well established by case law and may be summarized as follows :

- The Court may dismiss an application if it has no reasonable chance of success or is abusive;
- Abuse may result from an application that is clearly unfounded, frivolous or dilatory or from a party's vexatious conduct;
- Abuse may also result from the use of procedure that is excessive, unreasonable or defeats the ends of justice; the failure to respect the principle of proportionality may, depending on the circumstances, be considered abusive;
- Recklessly instituted proceedings may constitute abuse as well;
- The Court may find abuse regardless of intent and there is no requirement to demonstrate malice or bad faith;
- If a party summarily establishes that an application or a party's conduct is abusive, the burden of proof is reversed and the onus rests upon the party who introduced the proceeding to show that it is not acting excessively or unreasonably and that its claim is justified in law;
- The Court must be cautious and only dismiss an action if a careful examination of the file leads it to conclude that the case is clearly unfounded, frivolous or dilatory;
- The Court may dismiss an application at a preliminary stage even on the grounds of prescription;
- The Court is not limited to the allegations of the originating application and the exhibits in support thereof; it may consider the entire file including all other proceedings and exhibits filed by the parties as well as the facts disclosed during pre-trial examinations; and

- If the situation is clear, the Court must rule without unnecessarily postponing the analysis of the case to a later judicial stage.[9]

[20] The Court endorses the following comments from Justice Di Donato:

> [20] As observed recently by the Supreme Court of Canada, effective and fair litigation as well as the scarcity of judicial resources require that courts be able to dismiss claims that are manifestly unfounded at a preliminary stage:
>
> > [48] The potential for wasted judicial resources here is considerable. As this Court set out in *Hryniak v. Mauldin*, "undue process and protracted trials, with unnecessary expense and delay, can *prevent* the fair and just resolution of disputes": para. 24. The fair and just resolution of disputes requires an efficient allocation of judicial resources. The scarcity of judicial resources requires that courts be able to dismiss claims that are manifestly unfounded at a preliminary stage.
> >
> > [49] To borrow from Chief Justice McLachlin in *R. v. Imperial Tobacco Canada Ltd.*, "[t]he power to strike out claims that have no reasonable prospect of success is a valuable housekeeping measure essential to effective and fair litigation. It unclutters the proceedings, weeding out the hopeless claims and ensuring that those that have some chance of success go on to trial".[10]
>
> (omitted references)

[22] The extinctive prescription applicable to the exercise of a personal right is three (3) years.

> Art. 2925. An action to assert a personal right or a movable real right for which no other limitation period is otherwise provided is prescribed by three years.

[23] The prescription of a judicial recourse starts on the day upon which the right of action arises.

> Art. 2880. […] The day on which the right of action arises determines the starting point of extinctive prescription

[24] In cases involving civil liability, the starting point for extinctive prescription corresponds to the day on which a plaintiff has sufficient knowledge of the elements required to support his right of action. The elements required to support the right of action based on professional liability are a fault, a damage and a causal link between the fault and the damage. All three must be present for the right of action to arise and for the prescription to run.

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[9] *2741-8854 Québec inc.* v. *Restaurant King Ouest inc.*, 2018 QCCA 1807; *Kempster* c. *Radin*, 2021 QCCS 2105.

[10] *Kempster* c. *Radin*, 2021 QCCS 2105.

[25] The prescriptive period runs from the day when a reasonably prudent and informed person could have suspected the connection between the damage and the fault.

[26] This element of knowledge requires more than a suspicion but not an absolute certainty. The standard of "*raisonnablement certain*" is the level of knowledge established by the Court of Appeal[11].

[27] As decided in many instances, the Court should not dismiss the action unless it is certain that it is prescribed[12].

[28] Although courts must exercise caution before dismissing an action at a preliminary stage based on prescription, it is in the interest of the judicial system to avoid unnecessary litigation.

[29] The existence of an expert report does not delay the starting point of prescription when the elements of the right of action were already present[13].

1.2 Discussion

[30] According to the principles set out above, the starting point of the limitation period is the moment when Mr. Sanctuary became aware of the existence of a fault, of the damage suffered, and of the causal link between them.

[31] Mr. Sanctuary alleges that Mr. Levy committed an error in the Calculation and claims that he based his decision to appeal the Notice of Assessment on that Calculation.

[32] The issue in dispute is to determine when Mr. Sanctuary acquired sufficient knowledge of the alleged fault, namely the error in the Calculation.

[33] Mr. Sanctuary alleges in his originating application that as early as June 2020, he suspected that an error had been committed by Mr. Levy[14].

[34] On June 1st, 2020, Mr, Sanctuary, realizing that Mr. Levy's calculation may have been incorrect, emailed him requesting confirmation of the amounts stipulated in his report, to which Mr. Levy replied by confirming his calculation and including an Excel spreadsheet[15].

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[11] *Dufour* c. *Havrankova*, 2013 QCCA 486.
[12] *Rosenberg* c. *Canada (Attorney General)*, 2014 QCCS 1593 (appeal dismissed at: *Rosenberg* c*. Canada (Procureur général)*, 2014 QCCA 2041.
[13] *Père du Meuble inc.* v. *Provigo Distribution inc*., 2020 QCCS 4390*; 9193-4265 Québec inc.* v. *Rubin & Rotman inc*., 2016 QCCS 3487.
[14] Originating application, par, 26.
[15] Exhibit P-14.

[35] Mr. Sanctuary's knowledge on that date is also confirmed by the demand letter sent by his former attorneys on January 27, 2023, which states the following:

> On June 1st, 2020, our Client, realizing that your calculation was incorrect, emailed you requesting confirmation of the amounts stipulated in your report.

[36] Mr. Sanctuary's lawyers also indicated in that demand letter that on September 23, 2020, they retained the services of Mr. Paul Lemieux, a tax accountant, to assess the impact of Mr. Levy's alleged error.

[37] Mr. Levy's lawyers also draw the Court's attention to the refund application form dated June 6, 2020, that sets out the amounts claimed from CRA as a refund, and more specifically the abatement credit. They plead that this is a clear indication that not only did Mr. Sanctuary had knowledge of the error, but he was also aware of the damages resulting therefrom.

[38] While it is true that the form is not signed, during his examination on discovery, Mr. Sanctuary stated: "I filed my application for refund."

[39] Considering the above, the Court agrees with the Defendants' arguments.

[40] Furthermore, the allegations in the Originating Application are clear to the effect that Mr. Sanctuary realized that the Calculation was erroneous at the time he received the Refund:

> 25. From Plaintiff's Canada Revenue Agency refund, it was evident to Plaintiff that the difference between Ontario and Québec tax rates was substantially less than he anticipated from Defendant's calculation;

[41] During his examination on discovery held on March 26, 2024, Mr. Sanctuary had the opportunity to provide further explanations to support his view and more specifically, to explain that he only acquired knowledge later on.

[42] However, he instead confirmed that he identified the error within "5 to 10 minutes" and that he found the error himself, Mr. Lemieux having merely confirmed it:

> Q260. Okay. But is it possible that — and we saw in the e-mail you were asking the question to Mr. Levy, "Can they refuse to refund me?" Is it possible that you were also wondering if they could refuse to refund you the abatement?
>
> A. No. I never — the tax — the abatement tax never came up. Ever. Until I got my refund from Revenue Canada, which was considerably more than I expected, and alerted me. At that point, I said, "What's going on?"
>
> And I, who haven't done my taxes since nineteen eighty-four (1984), always been done by a CPA or a tax accountant, when I looked at the — my taxes, within ten (10) minutes, five (5) minutes, I realized Mr. Levy's error, because I saw that I didn't

get the Quebec abatement credit. And so, after that, I realized that he had made this enormous error, which caused me, you know, years of work and problems.

And so, I — yes. So, I just — but that was the situation at the time. Is it — am I clear?

Q261. Yes. So, I just want to make sure I understand correctly. So, when you had your discussion with Mr. Levy regarding the calculation he made, you then — to your recollection, there was no discussion regarding the abatement and the impact...?

A. No. The first time I knew about the Quebec abatement tax was in two thousand and twenty (2020), when I — after I received the refund from Ontario. And, at that time, I said, "Wow! I got a lot more back than I expected." And then, like I said, I looked at my taxes and I found the reason, myself, and Mr. Lemieux confirmed that.

(…)

Q328. Yes. So, this is your application. So, we are after you received the judgment from Justice Davignon from two thousand twenty (2020). And, at paragraph 24, your lawyer states:

"Plaintiff paid the amounts due to Revenue Quebec within thirty (30) days and applied for a refund from Canada Revenue Agency and received same for the taxation year 2012."

And then, after, you're saying:

"From Plaintiff's Canada Revenue Agency refund, it was evident to Plaintiff that the difference between Ontario and Québec tax rates was substantially less than he anticipated."

Can you explain...

A. Yes.

Q329. ... how it was evident to you and how you find out this — the error you're saying there is in the calculation?

A. Well, the first time I was aware of an error was the large quantum of difference between what I received back from Revenue Canada in comparison to what I should have received back if Levy's calculation had been correct. It was clearly like a — stood out like a sore thumb. It was clear that there was — I got sixty thousand ($60,000), or fifty thousand dollars ($50,000) back more than I expected. And that alerted me.

[…]

> Q333. It's fine now. So, okay. So, we were talking about your paragraph 24 and 25. So, I understand that it was evident to you, and it is what is written in your application. So, I want to understand, why was it evident to you?
>
> A. Why it was what?
>
> Q334. It was evident to you.
>
> A. Yes, because — okay. It was evident to me because I received a refund from Revenue Canada which was fifty thousand dollars ($50,000) more than I expected, based upon Mr. Levy's calculation. And that's not difficult to miss.
>
> (Underline added)

[43] There is no doubt that Mr. Sanctuary suspected an error as early as June 2020 and that he had confirmation of its existence at the latest on September 4, 2020, being the date of the CRA refund. At that point, he had sufficient knowledge of the alleged fault, beyond mere suspicions.

[44] Mr. Sanctuary argues that he only became aware of the alleged fault when he received Mr. Lemieux's expert report.

[45] However, the case law recognizes that the receipt of an expert report does not delay the starting point of the limitation period where the elements necessary for the right of action to arise are already present[16].

[46] During his examination on discovery, Mr. Sanctuary explained that he discovered the error himself, but that he retained the services of accountant Paul Lemieux in anticipation of future legal proceedings against Mark Levy[17].

[47] Considering the above, Mr. Sanctuary became aware of the alleged fault and the damages resulting therefrom at the latest on September 4, 2020, when he received the CRA refund.

[48] Furthermore, at the time he received the refund, Mr. Sanctuary already knew the extent of the damages he alleges, having already paid the amounts owing to Revenu Québec as well as professional fees.

[49] With respect to the causal link, Mr. Sanctuary submits that had he known the actual difference of approximately $17,000 between the taxes payable as a resident of Québec versus Ontario, he would never have decided to appeal the Notice of Assessment. Knowledge of the causal link therefore arose at the moment he became aware of the alleged fault.

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[16] *Père du Meuble inc.* c. *Provigo Distribution inc.* 2020 QCCS 4390.
[17] Mr. Sanctuary's examination, pp 100-101.

[50] Accordingly, Mr Sanctuary had knowledge of all three elements of his claim against Mark Levy—namely the fault, the damage, and the causal link—at the latest on September 4, 2020, when he received the refund.

[51] His claim is therefore prescribed, as it was instituted on October 23, 2023, whereas the limitation period expired on September 4, 2023.

[52] Mr. Sanctuary argues that the formal demand letter of December 15, 2020, interrupted prescription pursuant to Article 2892 C.C.Q.

[53] However, a formal demand letter does not interrupt prescription within the meaning of Article 2892 C.C.Q., which refers specifically to the filing of a judicial application:

> [39] The plaintiff submits that the sending of formal demand letters in March 2017 had the effect of suspending the limitation period.
>
> [40] This argument cannot defeat the Defendants' application for dismissal. The plaintiff may claim neither interruption nor suspension of prescription.
>
> [41] On the one hand, a formal demand letter does not have the effect attributed to it by the plaintiff.

[54] Mr. Sanctuary further claims that in good faith, he undertook steps with Revenu Québec between 2021 and 2022 to determine the actual fiscal impacts.

[55] Such steps cannot have the effect of suspending the starting point of prescription, as noted by the Superior Court:

> [56] The "wait and see" approach argument is unfounded since the courts have recognized that the remedial steps taken by a holder of a right do not suspend the beginning of the extinctive prescription period. Furthermore, a party is not required to exhaust its remedies before initiating an action before the Courts.[18]

FOR THESE REASONS, THE COURT:

[56] **GRANTS** Defendants' Demand to dismiss the action;

[57] **DISMISSES** Plaintiff's Application;

[58] **THE WHOLE, WITH COSTS.**

[18] *Kempster v. Radin*, 2021 QCCS 2105.

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MARIE-CLAUDE LALANDE, J.S.C.

Bryan C. Sanctuary
Self-Represented
Plaintiff

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Defendants' Attorneys

Hearing date: November 3, 2025